Docket No.: 09-0263
Bench Date:12/2/09
Deadline: 12/3/09 (AG Pet)
12/6/09 (Oak Park Pet)

MEMORANDUM_____

TO: The Commission

FROM: Claudia E. Sainsot, and D. Ethan Kimbrel,
Administrative Law Judges

DATE: November 24, 2009

SUBJECT: The Commonwealth Edison Company
Petition to Approve an Advanced Metering Infrastructure Program and Associated Tariffs

Petition for Rehearing filed by the Illinois Attorney General (the "AG")
Petition for Modification or Rehearing filed by the Village of Oak Park

RECOMMENDATION: Deny the relief requested in both Petitions.

The Procedural Posture of These Two Petitions

Section 10-113(a) of the Public Utilities Act (the "PUA") provides that this Commission, may, at any time, upon notice to the public utility affected, and, after opportunity to be heard upon that notice, "alter or amend any rule, regulation, order or decision made by it." 220 ILCS 5/10-113(a). Any order rescinding, altering, or amending a prior rule, regulation, order or decision shall, when served upon the public utility affected, have the same effect as is otherwise provided in the PUA for original rules, regulations, orders or decisions. *Id.*

This Commission must also grant such applications, in whole or in part, within 20 days from the date, upon which, those applications are received. Additionally, no appeal is allowed from any rule, regulation, order or decision unless and until an application for rehearing thereof is filed and disposed of by this Commission. *Id.* When these procedural rules are applied to the applications/petitions in question, it becomes clear that both of them (the petition filed by the Village Oak Park, and, that filed by the AG) should be denied.

The Village of Oak Park's Petition

The Village of Oak Park was granted leave to intervene on November 19, 2009, just slightly more than a month after the final Order issued in this docket. (the final Order issued on October 14, 2009). The ruling granting such leave reminded Oak Park and the parties that Oak Park was required by law to take this case as it stands upon intervention. *See,* ALJ Ruling of November 19, 2009.

In Oak Park's Petition, it requested modification of the Commission's final Order, or, rehearing of that Order. In support, Oak Park stated the following:

The Advanced Metering Infrastructure ("AMI") Pilot Program that this Commission approved in this docket includes the installation of some AMI meters in Oak Park. Oak Park has met with ComEd several times to discuss its involvement in the program. According to Oak Park, ComEd has repeatedly assured that "the program includes providing customers with the technology to allow for real-time, or near real-time, wireless, two-way secured communication from the meter to the residence." Petition to Intervene at 1.

Oak Park officials evidently knew about the proceedings here, as, Oak Park states that it did not participate in the hearing process because it had no issues with the proposed test process. However, on November 10, 2009, ComEd allegedly represented to Oak Park that the smart meters that will be installed as part of this test program will not include activation of any "Zigbee Chips." "Zigbee Chips" provide customers with wireless, two-way, real-time communication of customers' electric usage information. According to Oak Park, if "Zigbee Chips" are not used, it is impossible for a resident to obtain any real-time energy usage at the meter. Oak Park concludes that it would therefore be, under such a scenario, impossible to make a positive change in usage. *Id.* at 1-2.

Oak Park states that, in 2007, its Village President signed the U.S. Conference of Mayors Climate Protection Agreement. This Agreement committed Oak Park to lowering its carbon emissions by 7%, compared to 1990 levels. Oak Park then commissioned a village-wide study to determine the most effective means to achieve the emission-reduction goals. The study indicated that, as one of Chicago's first bedroom communities, Oak Park's major contributor to carbon emissions is its aging housing stock. In light of these facts, it has been working diligently to have AMI smart meters installed in its community. Petition for Modification or Rehearing at 1-2.

Oak Park asserts that the October 14, 2009, Order envisioned the use of a smart meter, which includes wireless, near real-time, two-way communications between the meter and the customers. It argues that this Order further states that the purpose of the program is to determine whether the meters are cost-effective, including whether they reduce electricity usage and influence customer behavior. In support, it cites that Order at page 8.

Oak Park points out that, the purpose of the Customer Applications portion of the AMI program is to provide insights into the customer behavior that is associated with utility demand-response and energy efficiency programs. These insights can be used by ComEd to determine the cost-benefit analysis of new technologies, such as AMI, but also, web-based informational feedback, and other devices. It cites the testimony of ComEd witness Mr. Doherty, who testified that the proposed 141,000 AMI meter deployment, pursuant to what was authorized in this docket, will include two-way communications with time-of-use measurement, support five-minute interval information collection, support for outage management, tamper detection, and bi-directional metering. ComEd Ex. 3.0 at 3; Order of October 14, 2009 at 5. The Village further cites ComEd witness Mr. Meehan, who testified that a number of IT (Information Technology) tools are essential in order to capture AMI information automatically and deliver it to ComEd's systems, to show customers their usage, to present information and workflows to employees; to track and manage assets; and, to update ComEd's backend systems. *Id.* ComEd Ex. 2.0 at 12-13; 16-17; Order of October 14, 2009, at 6; Petition for Modification or Rehearing at 4.

However, here, ComEd has allegedly represented to Oak Park officials that it will provide Oak Park residents only with access to "old usage information" over a web site that displays these customers' usage patterns in the past 24 hours. Old usage information, the Village asserts, does not influence the behavior of a customer who is looking to make a usage decision at the present moment. Old usage information also cannot interact with smart appliances that can be set to delay activation based on current usage information. Petition for Modification or Rehearing at 5.

In support of its request for modification of the final Order in this docket, Oak Park states that this proceeding should be reopened to clarify that the pilot program that is the subject of this docket, as approved, includes the use of AMIs that provide customers with wireless, two-way, real-time, or near real-time usage information. *Id.* at 4. It asks this Commission to modify the October 14, 2009, Order to clarify that the AMI pilot program provides wireless, two-way, near real-time measurement and communication. In the alternative, Oak Park asks this Commission to modify this Order to require ComEd to activate the wireless, two-way communication devices that are allegedly in the AMI meters that will be deployed to Oak Park. *Id.* at 5.

ComEd's Response to Oak Park's Petition

Because ComEd has not had a chance to review or challenge the new allegations in Oak Park's Petition, we issued a ruling allowing it until the close of business on Monday, November 23, 2009, to respond to Oak Park's Petition. In its Response, ComEd states that this Petition requests that the Commission require that the AMI meters that are the subject of this pilot must be able to provide real-time usage information to compatible in-home devices that customers in Oak Park may install, even if they are not in the pilot group that is to receive these in-home devices from ComEd pursuant to the program. Response at 1.

However, ComEd continues, it was never its intention to prevent access to usage information by any customer who purchases a technologically compatible in-home device. ComEd avers that it will also continue to work to learn as much as possible about which commercially-available in-home devices work best with its pilot AMI system. Updates will be communicated to Oak Park and to all of the other communities in the pilot program. *Id.* at 1-2.

ComEd contends that the Village has also raised the additional issue of accessing price information through the AMI meters in conjunction with a real-time pricing program. ComEd states that, although this issue is very challenging, it will work with Oak Park on this issue also. It pledges to remain in close contact with Oak Park regarding this issue and any other issue. *Id.* at 2.

ComEd argues, though, that rehearing is not the appropriate forum for the issues presented by Oak Park. It points out that parties seeking rehearing must take the record as it stands; they are bound by rulings and orders entered before intervention is granted. In support, it cites 83. Ill. Adm. Code 200.200(e). It further states that disturbing the finality of the Order by granting rehearing would impede the program and undermine customers' ability to receive the benefits of AMI as soon as is prudently practical. *Id.* at 2-3.

Analysis and Conclusions

The program that is the subject of this docket is an experiment, through which, customers will receive equipment and other items for free or for very little cost. A participating municipality has no right to demand receipt of a certain type of equipment (in this case, a "Zigbee Chip") any more than a non-participating municipality would have the right to demand inclusion in the program. And, while Oak Park is correct in asserting that this program provides wireless, two-way, near real-time measurement and communication, the final Order in this docket made it very clear that not all of the program participants would be receiving such equipment. *See, e.g.,* final Order of October 14, 2009 at 9-10.

Further, ComEd's Response is some indicia that what Oak Park wants is for ComEd to provide real-time usage information to customers who are not in the pilot group receiving the pilot program's in-home devices. Instead, according to ComEd, Oak Park seeks an Order compelling ComEd to supply this information to Oak Park residents who have purchased their own in-home devices. The final Order in this docket did not authorize this or require it.

Additionally, Oak Park officials apparently knew about this docket, but they chose not to participate in it. As ComEd points out, granting rehearing will only delay this program, based on allegations that are not of record. And, Oak Park's conclusion that "old usage information" is not useful is without any factual support or foundation.

Finally, ComEd's Response indicates that ComEd is working with Oak Park to resolve Oak Park's issues. Some of these issues appear to be complicated, and, therefore, they must be well thought out, which takes time. Granting rehearing does not appear to be something that will resolve these issues, or something that will hasten the planning process.

We recommend, therefore, denying the Village of Oak Park's Petition for Rehearing, in its entirety.

The AG's Petition for Rehearing

Single-issue Ratemaking

The AG argues in its Petition for Rehearing that the analysis in the final Order of when riders are permissible and its conclusion to allow rider recovery in general of the pilot AMI investment and expenses is wrong as a matter of law. Petition for Rehearing at 3-8. The AG specifically maintains that Rider AMP violates the prohibition against single-issue ratemaking and fits none of the criteria for permissible rider recovery. The AG states that the pilot costs at issue are not unexpected, volatile or fluctuating in any sense inasmuch as ComEd has control over the amount to be spent on this pilot.

The AG also argues that the Order wrongly distinguishes the *Finkl* ruling by noting that the dollars at issue are expenses, and not lost revenues, as was the case in the *Finkl* decision. See, *A Finkl & Sons Co v. Ill. Commerce Commission,* 250 Ill. App. 3d 317, 329, 620 N.E.2d 1141 (1st Dist. 1993). The AG points out that while the *Finkl* Court did rule that lost revenues cannot be recovered through a rider, the Court's conclusion that the rider at issue constituted illegal single-issue ratemaking specifically addressed rider recovery of demand side management ("DSM") expenses (not revenues). The AG continues that the *Finkl* decision involved the Commission's approval of the DSM rider in question outside of a rate case and the Court ruled that the rider was illegal. The AG concludes that the rule against single-issue ratemaking was never limited to rate cases.

The AG asserts that Illinois courts have permitted riders to recover pass-through cost items as expenses or fees required by statute or ordinance to all ratepayers or a subset of customers. It states that the PUA expressly provides exceptions for utility cost recovery outside of rate case proceedings most recently when the legislature authorized rider recovery of energy efficiency program expenses and incremental bad debt. However, ComEd's proposed Rider AMP and all accompanying surcharges fit none of these articulated exceptions, the AG argues, and further ComEd never attempted to argue that its capital costs associated with the pilot or its proposed expansion of Rider AMP fits into any of the judicially-recognized or statutorily-authorized categories appropriate for rider treatment.

Analysis and Conclusions

As previously stated in the final Order, while we agree with the AG that generally, use of a rider should be sparing, it is well-settled that use of a rider is an appropriate mechanism that does not constitute single-issue ratemaking, as, the prohibition against single-issue ratemaking requires only that, in a general base rate proceeding, this Commission must examine all elements of a utility's revenue requirement, including its return on investment. The prohibition against single-issue ratemaking does not circumscribe this Commission's ability to approve direct recovery of a particular cost through a rider. *Citizens Utility Board v. Illinois Commerce Commission,* 166 Ill. 2d 111, 137-38, 651 N.E.2d 1089 (1995). Moreover, unlike the situation in *Finkl,* this is but a pilot program. Pilot programs are, by their very nature, experimental. Rider AMP is not intended to be permanent. This argument lacks merit.

Retroactive Ratemaking

The AG argues that, when approving the cost-recovery riders for the AMI program, this Commission violated the PUA's prohibition against retroactive ratemaking. The AG asserts that Rider AMP will generate surcharges determined by a formula for computing a return on, and of, investment in AMI after the overall customer rates were established in ComEd's last rate case, docket 07-0566. The AG acknowledges that there will be an annual reconciliation and prudency review. However, the AG continues, there was a prudence review in *A Finkl & Sons Co v. Ill. Commerce Commission,* 250 Ill. App. 3d 317, 329, 620 N.E.2d 1141 (1st Dist. 1993), but, the Appellate Court in *Finkl* nevertheless found the rider recovery to be improper, determining that approving this rider constitutes retroactive ratemaking. Petition for Rehearing at 9.

The AG further posits that the earnings cap in the program here provides no meaningful protection to ratepayers. This is true, the AG continues, because it is not possible to perform the prescribed calculations regarding the earnings cap with sufficient precision to ensure that no excess earnings will occur. Also, Rider AMP (one of the riders that were approved as a part of the pilot program) does not have a process to provide for alternative views of what adjustments should be made. And, according to the AG, in the final Order in docket 07-0566, this Commission expressed reservations about the earnings cap. In support, the AG cites the final Order in docket 07-0566, Order of September 10, 2008, at 138. The AG concludes that approving Rider AMP is contrary to 220 ILCS 5/10-201(e)(iv)(A) through (D).[1] *Id.* at 10-11.

1 These portions of the PUA provide that the appellate court shall reverse a Commission rule, regulation, order or decision when the findings are not supported by substantial evidence; when this Commission lacks jurisdiction; when the rule or decision violates the State or federal constitution; or, when the proceeding or manner by which the Commission considered its rule or decision were in violation of the State or federal constitution. 220 ILCS 5/10-201(e)(iv)(A) through (D).

Analysis and Conclusions

The lack of applicability of the *Finkl* decision to the facts here was discussed in the final Order in this docket at pp. 22-25. Additionally, the AG overlooks the fact that the Rider in *Finkl* had no mechanism, through which, the utility would account for the reductions in costs it would incur as a result of that Rider, which concerned a demand-side management program. *See Finkl,* 250 Ill. App. 3d at 326. This is in contrast to the situation here, where ComEd has planned, in detail, to quantify any operating cost savings, avoided energy purchases and like items. *See, e.g.,* ComEd Ex. 3.0 at 2-9. Moreover, the program here is a unique test program of limited duration. This Commission is not circumscribed from authorizing a utility's use of a Rider to recover a unique cost. *Citizens Utility Board v. Illinois Commerce Commission,* 166 Ill. 2d 111, 137-38, 651 N.E.2d 1089 (1995), affirming the propriety of the use of a coal tar rider. This argument is without merit.

Violation of Test Year Rules

The AG states that the purpose of the test-year rule is to prevent a utility from overstating its revenue requirement by mismatching evidence of low revenue from one year with evidence of high expenses from a different year. Use of a test year rule results in the establishment of a test year rate base, reflecting gross additions, retirements and transfers to plant-in-service, concluding with plant balances and total plant-in-service. And, according to the AG, the calculation of ComEd's plant additions or capital expenditures, for purposes of setting rates, is subject to test-year principles. Petition for Rehearing at 11-12.

The AG contends that Rider AMP violates test-year principles by selecting only components of the revenue requirement, which are, the financing costs of investment in Rider AMP projects, as well as the expenses associated with the Customer Applications pilot. The AG avers that when approving the surcharge for the AMI program through Rider AMP, this Commission provided for expedited, piecemeal, rate increases for incremental capital investment between rate case test years, in violation of the Commission's test year rules. *Id*. at 11-12.

Analysis and Conclusions

As was stated previously, the Illinois Supreme Court has ruled that rider recovery is not inappropriate for unique expenses. *Citizens Utility Board,* 166 Ill. 2d at 137-39. Moreover, there is no evidence here that it is possible to mismatch evidence of low revenue from one year with evidence of high expenses from a different year. Indeed, this program has a limited expenditure approval, and, it is for a very limited period of time. Additionally, the surcharge will be imposed upon a monthly basis, to be determined as the expenses on the program are incurred. And, there will be annual reconciliation proceedings regarding the expenditures on this pilot program.

Further, in the final Order in this docket, ComEd was required to state with specificity, in its report to this Commission, its expenditures, and why they were necessary for the program. In this report, ComEd was additionally required to quantify, with specificity, all of the practicably quantifiable expenses and like items that have been reduced as a result of the pilot program. This report must also be verified by person(s) with personal knowledge of the facts in that report. *See,* final Order of October 14, 2009, at 14. Protections are in place to ensure that ratepayers are charged no more than the cost of actual expenses that are prudently incurred, less any cost savings that ComEd may incur as a result of the program. This argument lacks merit.

Violation of Section 9-211 of the PUA

The AG argues that, when approving Rider AMP, this Commission violated Section 9-211 of the PUA. This statute requires that:

> [T]he Commission in any determination of rates or charges, shall include in a utility's rate base only the value of such investment which is both prudently incurred and used and useful in providing services to public utility customers.

220 ILCS 5/9-211. The AG contends that the Phase 0 costs imposed pursuant to Rider AMP are not prudently-incurred, and, they are not used and useful in providing service to customers. Petition for Rehearing at 13-14.

Analysis and Conclusions

As was discussed in the Commission's final Order of October 14, 2009, Phase 0 of the pilot program that is the subject of this docket was specifically approved by this Commission in docket 07-0566, which is, ComEd's last rate case. *See, e.g.,* Order of October 14, 2009, at 3-4. In fact, the AG acknowledges this fact. Petition for Rehearing at 15. Because Phase 0 was already approved in another proceeding, this argument also lacks merit.

The Propriety of Passing on the Cost of the Customer Applications Portion of the Pilot Program to Ratepayers

The AG states that ComEd has control over whether the costs it incurs are recovered in a rate case, as, it is free to file a rate case that uses a test year, in which, the majority of the expenses for the Customer Applications portion of the program are incurred. ComEd also could "trim" the program. And, because the cost of this portion of the program is not great, (approximately $12.6 million) the AG concludes that ComEd failed to establish that the expenditures on this portion of the pilot are something out of the ordinary ebb and flow of utility expenses. In support, the AG cites the testimony of its witness, Mr. Brosch, who stated that it is not unusual for utility operational and maintenance expenses, like those that ComEd will expend on the Customer

Applications portion of the program, to fluctuate significantly from month-to-month or from year-to-year. AG/AARP Ex. 1.0 at 9; AG Petition for Rehearing at 14-15.

The AG further contends that the final Order in this docket is flawed. In response to this same argument, that Order stated that: "ComEd's financial projections for 2009 do not guarantee its financial condition in 2010, which is when a good portion of the Customer Applications Program will occur." *See,* Order of October 14, 2009 at 17. However, the AG asserts, Mr. Brosch testified that ComEd has some $125 million in discretionary spending that it recently determined not to spend. Thus, the AG concludes that the notion that ComEd cannot finance the Customer Applications portion of the program is erroneous. Petition for Rehearing at 15.

The AG also asserts that in the final Order in docket 07-0566, this Commission limited the recovery of rider expenses to the capital costs that are associated with Phase 0 investment. However, the AG maintains, essentially, that such approval was limited to the cost of the AMI meters; it did not include the cost of the Customer Applications portion of the program. *Id.* at 16.

Analysis and Conclusions

The AG misses the point in allowing rider recovery of the expenses that ComEd will incur here for the Customer Applications portion of the program. It is not whether ComEd can afford to pay for anything. Rather, it is a matter of policy. The AMI meters, as well as the Customer Applications portion of the program, benefit consumers, as, the program is designed to teach people how their usage can affect the cost of electricity. As the final Order notes, the AG's approach does not encourage utilities to try new ways to hold down or reduce customers' utility costs. *See,* final Order of October 14, 2009, at 17. Allowing a utility to recover the costs it incurs for a program that primarily benefits consumers provides an incentive to that utility to seek out innovative ways to reduce the costs that consumers bear. Requiring a utility to bear the cost of such a program does not provide such an incentive.

Additionally, the program here was developed as a result of the AMI workshops that were approved in docket 07-0566. ComEd has represented that, due to those workshops, it has determined that consumers would benefit from education regarding use of the AMI meters. Also, ComEd has represented that, due to those workshops, it determined that it should test what works best, in the way of rate structure, with residential and small commercial customers, in that, it seeks to test a variety of different types of applications and rates. These factors and others are what the Customer Applications portion of this program addresses. There is no evidence indicating that the representations made by ComEd regarding what evolved in these workshops are incorrect. Indeed, as the final Order in this docket notes, what this program tests is the human element, when that human element is given certain technology and information that aids in the making of energy consumption-related decisions. *Id.* at 15. This argument, also, lacks merit.

Reporting Requirements

According to the AG, ComEd failed to provide an adequate evaluation plan for the AMI meters, and also for the Customer Applications portion of the program. In support, the AG cites the testimony of its witness, Ms. Alexander, who stated that:

> ComEd does not provide any baseline information or even discuss how or when the baseline information for . . . . metrics (that) will be developed and made public. In other words, it is not reasonable to track newly acquired information on metrics or performance areas that are not already tracked by ComEd or that would not be possible to compare to historical performance data to determine the incremental impact of the AMI pilot program. Just because the operation of a pilot program has a measurable impact on any of these metrics compared to non-AMI equipped customers is not a sufficient basis for concluding that the AMI installation is the cause of this differential.

AG/AARP Ex. 2.0 at 18; Petition for Rehearing at 17.

The AG additionally asserts that this Commission erred in not requiring a comparison of possible alternatives to the proposed project. These alternatives, the AG maintains, might achieve some, if not all, of the expected benefits of the AMI system. Petition for Rehearing at 17. The AG also avers that this Commission should have required ComEd to evaluate "the full range of costs and benefits associated with a full-deployment of AMI technologies." In support, it cites the recommendation made by its witness Ms. Alexander. *Id.*

The AG further maintains that the final Order in this docket erroneously concluded that opening a docket to accept ComEd's final report is not necessary. *Id.* at 19. The AG argues that, in not requiring a litigated proceeding regarding this report, this Commission has abandoned its responsibility as a regulatory body. *Id.* In support, the AG states that this Commission conducts reconciliation dockets each year for energy efficiency expenses that are charged to ratepayers. According to the AG, energy efficiency reconciliation proceedings concern significantly smaller amounts of money than the amount of money that is at issue here. *Id.*

Analysis and Conclusions

It is not disputed that Ms. Alexander testified solely as an expert witness. The function of an expert witness is only to guide a trier of fact, like this Commission, in areas, with which, a non-expert in the pertinent field would not be familiar. *See, e.g., Johnson v. Johnson,* 386 Ill. App. 3d 522, 544, 898 N.E.2d 145 (1st Dist. 2008); *People v. Eddmonds,* 143 Ill. 2d 501, 537, 578 N.E.2d 952 (1991). The admission of expert testimony requires the proponent of that testimony to lay an adequate factual foundation, establishing that the information, upon which, the expert bases his or her

opinion, is reliable. *See, e.g., People v. Safford*, 392 Ill. App. 212, 221-23, 910 N.E. 2d 143 (1st Dist. 2009). Ms. Alexander provided no testimony establishing what the term "baseline information" is. Nor is it obvious. And, she provided no foundation as to what the metrics were that she referred to, as, she made no mention of what these metrics are, or, what they concern.

Indeed, Mr. O'Toole testified (Ms. Alexander's testimony on this issue concerned Mr. O'Toole's testimony) regarding many, many, things that might be considered to be "metrics." *See, e.g.,* ComEd Ex. 3.0 at 2-9. In short, Ms. Alexander's testimony on this issue contains little information establishing how she came to her expert opinion. *See,* AG/AARP. Ex. 2.0 at 18. Because Ms. Alexander's testimony on this matter lacks an evidentiary foundation, it was not considered. *Johnson,* 386 Ill. App. 3d at 544, *Safford,* 392 Ill. App. 3d at 231-23.

The comparison issue (requiring ComEd to compare the project here to possible alternatives to this project) was discussed in the final Order in this docket on pages 12-15. Ms. Alexander testified that, in her opinion, testing 5,000 to 10,000 meters should suffice to determine the validity of the AMI meters' operational characteristics. In that vein, she also testified that the program here should be compared to other types of programs. *See, e.g.,* final Order of October 14, 2009, at 12-15; AG/AARP Ex. 2.0 at 22.

However, as the final Order notes, Ms. Alexander's testimony in this regard concerns comparing the test that is the subject of this docket with tests of technology. What ComEd is testing here, however, is human behavior. It therefore would not aid ComEd, or, this Commission, to compare other tests concerning the effectiveness of technology with what ComEd is testing here. *See,* final Order of October 14, 2009, at 15-17. And, the AG does not state what other types of programs should be compared to the one that was approved in this docket. There are many, many, programs experimenting with alternatives to a standard rate design. This contention is very vague.

The AG's argument regarding "full-scale deployment" ignores the final Order in this docket. Because the parties have not defined what "full-scale deployment" is or what it would entail, and, because different parties seem to define this term in different ways, the final Order in this docket declined to require ComEd to identify the costs and impacts of "full-scale deployment." *See,* final Order of October 14, 2009, at 55-56.

Additionally, as the final Order explains, at this time, "it is not necessary, useful or productive" to require the opening of a docket to litigate the merits of the final report that ComEd will issue after the termination of the proceedings here. The AG also cites no law or facts in support of its contention that energy efficiency reconciliation dockets concern significantly less amounts of money than what is at issue here. And, the AG cites no law or facts indicating that this Commission is required to, or even should, open such a proceeding. If problems arise with that report, the AG, Commission Staff, or, other interested parties are always free to commence a proceeding contesting the propriety of that report. This argument, also, does not have merit.

Consistency Between this Case and ComEd's Last Rate Case when Requiring a Definition of "Full-Scale Deployment."

Finally, the AG contends that in ComEd's last rate case, docket 07-0566, the Commission specifically concluded that the pilot approved pursuant to the collaborative as a result of Phase 0 would inform the Smart Grid Collaborative as well as aid the Commission in its interest in learning the extent of the costs and the benefits involved in smart-grid technology. The AG points out that when approving the Phase 0 AMI pilot and the rider that would accompany this pilot, this Commission stated that: "Our hope is to have a better grasp of costs and benefits once Phase 0 is implemented and analyzed. . . ." Docket 07-0566, Order of September 10, 2008, at 138. The AG concludes that therefore, this Commission "inexplicably refused" to require ComEd to provide information regarding "full-scale deployment" at the conclusion of the program that is the subject of this docket. Petition for Rehearing at 20-22.

Yet, as was previously stated herein, the term "full-scale deployment" has not been defined. And, as was stated in the final Order in this docket, this term appears to have different meanings. *See,* final Order of October 14, 2009, at 56. For this reason, that Order declined to require ComEd to do something that was not defined. *Id.* Nowhere in the AG's arguments on rehearing is a definition of what "full-scale deployment" is, or what it would entail. Also, nowhere in this argument is any law indicating that it is appropriate to order an entity to do something when it is not clear what complying with the order would actually entail. In fact, nowhere in this argument is any fact or law indicating that this portion of the final Order in this docket was incorrect, improper, or, contrary to law. This argument lacks legal or factual bases.

Accordingly, we recommend denying rehearing to both Oak Park and the AG.

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